THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.7253 of 2006

ORAL ORDER:

This writ petition is filed seeking a Mandamus declaring the action of the respondents in refusing to register the case of the petitioner vide M.P. (SR) No.441/J dated 9.3.2005 and 20.6.2005 as illegal, arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India and contrary to the jurisdiction conferred on it vide G.O.Ms.No.146 dated 7.10.1992.

It appears, petitioner filed a petition under Section 33-C(2) of the Industrial Disputes Act, 1947 before the first respondent-Labour Court claiming certain monetary benefits from the Engineer-in-Chief, Irrigation and CAD Department, Government of A.P. and others. The said application was returned with the following objections:

1. How the petitioner is entitled to the benefits of the revised pay scales from time to time in the absence of sanction orders by the competent authority.
2. Petitioner has not filed the orders stated to have been passed by the Hon'ble Supreme Court.
3. Petitioner has to state how the present petition is maintainable for the delay occurred in approaching the Tribunal
4. Petitioner has to state how the present petition is maintainable before this Tribunal when the Award was passed by the Industrial Tribunal, Warangal after adjudicating the matter (I.D.No.92 of 1990 on the file of that Tribunal).

The petitioner re-submitted the petition by complying the objections. But nonetheless it was again returned for submitting the same before the appropriate Tribunal/Court/Authority.

The maintainability or otherwise as to how the petitioner is entitled for the benefits of revised pay scales etc., are all subject matter of enquiry. The petitioner could not have been thrown at the threshold stating that the petition is not maintainable and that there is no sanction order passed by the competent authority for applying the revised pay scales on which ground

the petitioner is claiming arrears of wages under Section 33-C(2) of the I.D. Act. The learned counsel for petitioner also relied upon the judgment rendered in **NOVAPAN INDUSTRIES LIMITED, PATANCHERU, MEDAK DISTRICT v. S.KRISHNA MURTHY AND ANOTHER**[1], whereunder it has been held deciding any question as a preliminary issue is a matter of procedure. The Tribunal or the Court can undertake the same if only the power is specifically conferred in this regard. The Civil Courts are entitled to decide preliminary questions only by virtue of the powers conferred upon them under Order XIV of CPC. Such a power is not vested in the Tribunals constituted under the Act. Rule 24 of the Industrial Disputes (Central) Rules, 1957 framed under the Act extends to the Boards, Courts, Labour Courts, Tribunals and National Tribunals constituted under the Act, the powers vested in a Civil Court under CPC only insofar as they relate to (a) discovery and inspection; (b) granting adjournment; and (c) reception of evidence taken on affidavit. Therefore, the very request by the management to decide the question of maintainability was incompatible with the scheme under the Act and the Rules. In the absence of any provision like Order XIV of CPC dealing with framing of issues or adjudication of preliminary issues, it is rather difficult to comprehend that the Act contemplates raising of preliminary issues and decisions thereon in the proceedings before the Labour Courts. Every objection as to question of fact or law is required to be decided comprehensively resulting in an Award. The territorial jurisdiction as well as maintainability can be decided by the Court while framing the issue along with other issues that arises for consideration in the M.P.

In view of the above, the impugned order is set aside and the matter is remitted back to the Labour Court. The Labour Court shall take up the M.P. on file and decide the same as per law within a period of four months from the date of receipt of a copy of this order.

The writ petition is accordingly disposed of. No order as to costs.

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C.V.RAMULU, J

Date: 4.6.2007

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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.7253 of 2006

4.6.2007

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.7253 of 2006

Date: 4th June, 2007

Between:

B.Nageshwar Rao

.. Petitioner

And

Additional Industrial Tribunal-cum-Additional Labour Court, 1st floor, Nampally, Hyderabad, rep. by its Chairman and others.

.. Respondents

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[1] 2003(2) ALD 126